



DEPARTMENT OF TRANSPORTATION [4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2010-0027]

Hours of Service of Drivers: RockTenn, Exemption Application

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; grant of application for exemption.

SUMMARY: FMCSA announces its decision to grant RockTenn an exemption from the driver hours-of-service (HOS) provisions of the Federal Motor Carrier Safety Regulations (FMCSRs). This limited exemption is for RockTenn's shipping department employees and occasional substitute commercial driver's license (CDL) holders who transport paper mill products short distances between its shipping and receiving locations on a public road. The exemption is restricted to a specific route. RockTenn requested an exemption from the HOS regulation that prohibits drivers from operating property-carrying commercial motor vehicles (CMVs) after the 14th hour of coming on duty. This exemption will allow these individuals to occasionally work up to 16 consecutive hours and be allowed to return to work with less than the mandatory 10 consecutive hours off duty.

DATES: This exemption is effective from April 17, 2012 (12:01 a.m.), through April 16, 2014 (11:59 p.m.).

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, Telephone: 202-366-4325. E-mail: MCPSD@dot.gov.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption from many of the safety regulations, including the HOS requirements in 49 CFR part 395, for a two-year period if it finds “such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level of safety that would be achieved absent such exemption” (49 CFR 381.305(a)).

Request for Exemption

Under 49 CFR 395.3(a)(2), a property-carrying CMV driver is prohibited from operating a CMV on a public road after the end of the 14th hour after coming on duty following 10 or more consecutive hours off duty.

RockTenn operates a paper mill located in Chattanooga, Tennessee, its principal place of business. Its shipping and receiving departments are on opposite sides of the paper mill, requiring driver-employees to travel on a public road to shuttle trailers as needed. These drivers utilize a public road – Compress Street – an average of forty times per day to travel between its manufacturing facility, and shipping and receiving docks. These drivers do not transport any material farther than the paper mill lots and/or Compress Street. The distance traveled on Compress Street is approximately 275 feet in one direction, and one tractor is used to perform this work.

RockTenn requires all shipping department CMV drivers to have the required 10 hours off duty prior to returning to work and only allows them to work a maximum of 14 consecutive hours in any given duty period. It has three 8-hour shifts up to 7 days a week, and there are two shipping employees on each shift. One employee drives a fork-

lift truck loading trailers with finished goods, and the other operates the tractor shuttling trailers. These employees do not drive the CMV continuously during their shift(s).

According to RockTenn, the problem arises because they use a backward-rotating shift schedule, and also on occasion when a shipping department driver does not report for work as scheduled. On a Monday, for example, if an individual worked the weekend, his or her shift would normally have to “hurry back” within 8 hours. As a result of the mandatory 10 hours off-duty requirement, RockTenn schedules these drivers’ shifts to start later than other employees. This creates at least 2 hours when the company cannot load or transport trailers with finished goods due to the absence of the drivers. Furthermore, as a result of the maximum 14 consecutive-hour duty period rule, they may “work short,” creating on-time delivery issues for other employees in the department, as they are not allowed to work an entire “double shift” (16 hours) when necessary.

RockTenn requested a limited exemption from 49 CFR part 395 for its shipping department CMV drivers, as well as others with a valid CDL who on occasion must substitute, allowing all such drivers to work up to 16 hours in a day and return to work with a minimum of at least 8 hours off duty. If exempt from the normal HOS requirements, these employees can follow the same work schedule as other RockTenn employees on their shift, and will be able to work for the full 16 hours of a “double shift.” RockTenn can therefore minimize the chances of delayed shipments that may occur when their drivers are not allowed to work the same schedule as other employees.

RockTenn acknowledged in its application that these drivers would still be subject to all of the other Federal Motor Carrier Safety Regulations (FMCSRs),

including possessing a CDL, random drug testing, medical certification, and other driver-qualification requirements.

A copy of RockTenn's application for exemption is available for review in the docket for this notice.

Comments

On June 14, 2010, FMCSA published notice of this application, and asked for public comment (75 FR 33664). One set of comments was received to the public docket. The Advocates for Highway and Auto Safety (Advocates) claimed that there is nothing in RockTenn's application demonstrating that directing workers to work 16 hours in a shift with 8 hours off duty would produce a safety outcome that is equivalent to or greater than the safety secured by adhering to the 14-hour rule. Advocates further indicated that approval of their request would be for the convenience of the applicant, with no assurance of safety benefit or equivalency.

FMCSA Decision

The FMCSA has evaluated RockTenn's application for exemption and the public comments. The Agency believes that RockTenn's overall safety performance as reflected in its "satisfactory" safety rating, as well as a number of other factors discussed below, will likely enable it to achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption (49 CFR 381.305(a)).

This exemption is being granted under extremely narrow conditions. The exemption is restricted to CDL holders employed by RockTenn who are exclusively assigned to a specific route. This specific route is entirely on one street (Compress Street), between their shipping and receiving departments – approximately 275 feet in

one direction. The CMVs operated by RockTenn's shipping department shuttle drivers will only be exposed to travel on a public road for very brief periods of time.

The exemption enables RockTenn's shipping department employees and occasional substitute CDL holders who transport paper mill products between their shipping and receiving locations to work up to 16 consecutive hours in a duty period and return to work with a minimum of at least 8 hours off duty when necessary. This is comparable to current HOS regulations that allow certain "short-haul" drivers a 16-hour driving "window" once a week and other non-CDL short-haul drivers two 16-hour duty periods per week, provided specified conditions are met. Furthermore, 49 CFR 381.305(a) specifies that motor carriers "...may apply for an exemption if one or more FMCSR prevents you from implementing more efficient or effective operations that would maintain a level of safety equivalent to, or greater than, the level achieved without the exemption."

Terms of the Exemption

Period of the Exemption

The exemption from the requirements of 49 CFR 395.3(a)(2) (the "14-hour rule") is granted for the period from 12:01 a.m. on April 17, 2012, through 11:59 p.m. on April 16, 2014, for drivers employed by RockTenn operating CMVs on Compress Street between the company's shipping and receiving departments.

Extent of the Exemption

The exemption is restricted to drivers employed by RockTenn operating CMVs on the route specified above. This exemption is limited strictly to the provisions of 49 CFR 395.3(a)(2) (Maximum driving time for property-carrying vehicles), commonly

referred to as the “14-hour rule”. In addition, on each trip, the CMV must only travel on Compress Street – approximately 275 feet in one direction – between RockTenn’s shipping and receiving departments. These drivers must comply with all other applicable provisions of the FMCSRs.

Preemption

In accordance with 49 U.S.C. 31315(d), during the period this exemption is in effect, no State shall enforce any law or regulation that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption.

Notification to FMCSA

RockTenn must notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5), involving any of the motor carrier’s CMVs operating under the terms of this exemption. The notification must include the following information:

- a. Date of the accident,
- b. City or town, and State, in which the accident occurred, or closest to the accident scene,
- c. Drivers name and license number,
- d. Vehicle number and state license number,
- e. Number of individuals suffering physical injury,
- f. Number of fatalities,
- g. The police-reported cause of the accident,
- h. Whether the driver was cited for violation of any traffic laws, motor carrier safety regulations, and
- i. The total driving time and total on-duty time period prior to the accident.

Reports filed under this provision shall be e-mailed to MCPSD@DOT.GOV.

Termination

FMCSA does not believe the drivers covered by this exemption will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation of the exemption. The FMCSA will immediately revoke the exemption for failure to comply with its terms and conditions. RockTenn and each driver may be subject to periodic monitoring by FMCSA during the period of the exemption.

Issued on: May 21, 2012

Anne S. Ferro
Administrator

[FR Doc. 2012-12819 Filed 05/25/2012 at 8:45 am; Publication Date: 05/29/2012]